

D7

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



PUBLIC COPY

1 APR 25 2006

File: EAC-02-086-52751 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

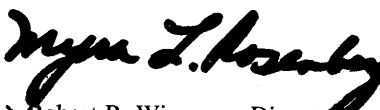
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a wholesale clothing company, seeks to employ the beneficiary temporarily in the United States as "Executive Manager" of its new office. The director determined that the petitioner had not demonstrated that the intended United States operation, within one year of the approval of the petition, would support an executive or managerial position.

On appeal, the petitioner argues that it is a viable company.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Regulations at 8 C.F.R. § 214.2(l)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services performed.

Regulations at 8 C.F.R. § 214.2(l)(3)(v) state that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that

the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

On the petition filed January 15, 2002, the petitioner states that it was established in 2001 and that it is a subsidiary of GABY, Ltd., located in Tbilisi, Georgia. The petitioner claims three employees and an undisclosed gross annual income. It seeks to employ the beneficiary for a two year period at an annual salary of \$35,000.

At issue in this proceeding is whether the petitioner has demonstrated that it will support an executive or managerial position within one year of the approval of the petition.

The petitioner initially submitted a business plan that included the purchase of \$78,040 in wholesale clothing, shoes and jewelry. The plan indicated that the US entity would have \$162,840 in expenses for the year and that this liability would be covered by a loan from a Georgian bank. The record contains a bank transaction document reflecting the transfer of \$9,939 from the Georgian bank to the United States bank, HSBC.

In a notice dated January 17, 2002, the petitioner was requested by the Service to submit evidence establishing the size and financial status of the U.S. investment as well as evidence that the U.S. entity is engaged in the continuous provision of goods and services.

The petitioner submitted a letter, in which he stated, in pertinent part, that:

Opening an American Office

[REDACTED] [REDACTED] has been incorporated in the State of New York with the goal of expanding the business activities of [REDACTED] into the US market. [The] initial mission of this newly established US entity is the purchase of clothing and accessories at the wholesale prices and shipment of these goods to Georgia [country] where they can be sold at a profit. To date, the entity has been able to achieve the following:

- 1) Signed sublease agreement (please see attachment)
- 2) Opened bank account (please see attachment)
- 3) Signed an agreement with Sunnyworld I.T.Corp., a wholesale distributor of clothing and accessories (please see attachment)
- 4) Signed an agreement with Caucasian Maritime Services shipping company concerning regular shipments of the aforementioned goods to Georgia. (please see attachment)

The petitioner also submitted a copy of a sub-lease agreement indicating that the petitioner had sub-leased 170 sq.ft. of office space on February 20, 2002 for one year at \$500.00 per month, a contract for the purchase of \$27,355 in clothing and accessories from Sunnyworld I.T. Corporation, and a "Cargo Transportation" agreement. Although the agreement indicates there are various transportation fees, tariffs and associated fees, the agreement did not stipulate any payment amounts. The record does not contain an attachment reflecting a bank account as claimed.

On appeal, the petitioner reiterates its contractual agreements indicating that it anticipates substantial growth within the next six to eight months. The petitioner states that it in number 2 above providing a letter from "TBS Bank" indicating that it has been extended a \$130,000 line of credit. The petitioner submits a letter of credit approval, dated May 7, 2002.

The petitioner indicated that the U.S. entity would have \$162,840 in liabilities during its first year of operation. The record reflects the transfer of less than \$10,000 in un-designated funds to a U.S. bank by the foreign entity. Assuming, however, that these funds are intended for use by the petitioner and with a \$130,000 line of credit, the petitioner will be without sufficient operating funds as stated during the first year of operation. There is no evidence that, as of the filing date of the petition, the foreign entity had provided the petitioner with sufficient funds to overcome the stated liabilities. Although claiming it will double its expenditures in income, the petitioner has produced no evidence of any income being generated during the first year. The petitioner's purported future sales notwithstanding, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N

Dec. 190 (Reg. Comm. 1972). Accordingly, the petitioner has not demonstrated that the intended United States operation, within one year of the approval of the petition, would support an executive or managerial position. For this reason, the petition may not be approved.

Beyond the director's decision, the petitioner has not established that the beneficiary's duties abroad have been managerial or executive in nature or that his proposed duties in the United States will be managerial or executive in nature. In addition, the petitioner has failed to establish that it has obtained sufficient physical premises to house the new office.

Further, the evidence is not persuasive that a qualifying relationship exists between the petitioner and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner claims to being 60 percent owned by the foreign entity, but does not submit sufficient evidence to corroborate this claim. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.